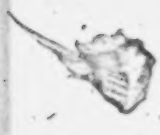

SUPREME COURT, U. S.

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No. 489

In the

Supreme Court of the United States

OCTOBER TERM, 1969

L. C. SHELTON, AMERICO DETRES, SR., as father and natural guardian of AMERICO DETRES, JR., a minor,

Petitioners,

vs.

CITY OF CHICAGO, a Municipal corporation and COUNTY OF COOK, a body politic and corporate,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BERNARD E. EPTON
EDWARD A. MCCARTHY
ALAN R. MILLER
69 West Washington Street
Chicago, Illinois 60602
Attorneys for Petitioners

The Scheffer Press, Inc.—ANdover 3-6850

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Petitioners submit this reply brief to respond to arguments contained in the separate briefs filed by the City of Chicago and County of Cook. No question has been raised concerning the question presented, jurisdictional basis or statement of the case. This brief is therefor limited to the point argued by both defendants that the decision of the Illinois Supreme Court is consistent with decisions of this Court and further to the argument by the City of Chicago that no substantial federal issue is involved.

I.

The Decisions Cited By Defendants Do Not Support The Retroactive Applicability of the Repeal.

Both Defendants rely upon the decision in *Louisiana* v. *Mayor of New Orleans,* 109 U.S. 285 (1883) and in particular the concurring opinion. In that case the Court refused to allow the issuance of a writ of mandamus to compel a tax levy to satisfy claims of persons who obtained judgments for damages caused by mob action. The Court was not called upon to examine any repeal of the statute. While the writ was not issued, the validity of the judgments was affirmed at 109 U.S. 289:

> ". . . The judgments may also, perhaps, be best used by the relators or their assignees as offsets to demands of the city: at least it is possible that they may be available in various ways. . . ."

The decision was predicated upon the determination that the judgments were not contracts, and to that extent it preserved the then sanctity of contractual rights over other rights. Petitioners assert that the statements by the Court relating to the power of a state to withdraw a remedy are *dicta* and further are not reflective of the concept of due process developed in the present century. The due process clause was referred to by Justice Harlan in his dissent in which he concluded at 109 U.S. 296:

> ". . . If this be not a deprivation of property without due process of law, it is, I think, difficult to conceive of a case involving such a deprivation."

The Respondents here have sought to invoke categories without meaning. Specifically the label of special statutory remedy has been used. Such a label is without substantive meaning or support in the case law. This Court consid-

ered a remedy based solely on a statute in *Ettor* v. *Tacoma*, 228 U.S. 148 (1912). There the Plaintiffs sought recovery under a statute granting compensation for damages caused by street grading. The case is substantially identical to the Petitioners' claim here in that the right to compensation was held not to exist at common law and was predicated solely upon the statute. That portion of statute relied upon was repealed while the case was pending. This Court held that the plaintiffs had a vested property right which could not be defeated. The Court further distinguished the case of *Louisiana* v. *New Orleans*, 109 U.S. 285 *supra*, stating at 228 U.S. 157:

> ". . . That case merely held that a judgment against the city under a statute for damage to private property inflicted by a mob did not constitute a contract, the obligation of which had been impaired by the repeal of a statute under which the city might have been compelled to levy a special tax for its satisfaction. The case turned upon the distinction between liability for a tort and liability under a contract."

No case has been cited by Defendants which upholds the repeal of a remedy against a governmental body. The statement by the City of Chicago concluding that the issue is no longer open to question because of "this abundant authority" is at best a complete misinterpretation of the issue. It is not supported in any case cited. Similarly it is difficult to conceive how the Defendants can in good faith assert that the requirement of the substitution of an *effective* remedy has been met by allowing the possibility of a tort action against the person inflicting injury.

II.

The Rights of Plaintiffs are Substantial.

At page four (4) of its brief the City of Chicago argues that since the repeal affects "only a relatively small number of litigants" the issue cannot be said to be "substantial." The preservation of constitutional rights should not depend on mathematical calculations. Even if only one person were involved he is entitled to constitutional protection under our laws. Here, however, the City ignores its own affidavit that over 200 cases are pending. It further disregards the fact that the case was accepted by the Illinois Supreme Court as a case of "extraordinary importance" on motions presented by it and the county.

Conclusion

Petitioners pray that the Petition for a Writ of Certiorari be granted and judgment below reversed.

Respectfully submitted,

BERNARD E. EPTON
EDWARD A. MCCARTHY
ALAN R. MILLER
69 West Washington Street
Chicago, Illinois 60602
Attorneys for Petitioners